

REMARKS

Claims 1-16 are pending in the above-identified application. Support for new claims 12-16 is found, for example, at page 5, lines 28-30, as well as in Table B at page 12 of the present specification.

Restriction Requirement

Applicant acknowledges that the Office Action of June 27, 2007 indicates that the previous Restriction Requirement of May 8, 2007 has been made "final". It is first noted that the present application is subject to Unity of Invention requirements, such that "restriction" practice of the USPTO does not apply to the present application. Secondly, the traversal of the Requirement is respectfully maintained by Applicant based on the reasons previously submitted with the Response filed June 8, 2007.

Interview with Patent Examiner

The Patent Examiner is thanked for conducting a Personal Interview with Applicant's representatives on August 28, 2007 in connection with this application. The interview Summary Record states that: "[The Examiner and Applicant's representatives discussed]... the prior art, scope of claims, and supporting comparative test data from specification. Examiner mentioned *KSR* decision, and applicants pointed out thousands of possible combinations and unpredictable [factors] regarding the prior art." These issues discussed at the Interview are addressed in more detail below.

Issues Under 35 US 103(a)

Claims 1-5 have been rejected under 35 USC 103(a) as being unpatentable over Pees '607 (WO 98/46607) and Müller '256 (WO 96/01256). This rejection is traversed based on the following reasons.

Present Invention and Its Advantages

The present invention is directed to the combination of a triazolopyrimidine of formula I and a carbamate of formula II, wherein formula II encompasses a group of closely related compounds which differ merely with respect to the one or two substituents present on the end phenyl ring, the substituents being selected from a small group including halogen, C1-C4alkyl or C1-C2-haloalkyl. A second embodiment of the present invention, as recited in claim 2, limits the carbamate to that of formula IIa wherein substituent X is fluorine, chlorine or methyl. A third embodiment is directed to the combination wherein the carbamate is limited to the specific compound of formula II-6, wherein substituent X is a chloro group. All of the present claims recite a weight ratio for the two compounds of at most 20:1 to 1:20 which is a first preferred range as noted at page 5, lines 28-30 of the present specification. Other dependent claims narrow this range to 10:1 to 1:10 which is a second preferred range, or 4:1 to 1:4 which is yet a narrower range that is strongly supported by the experimental test results shown in Table B at page 12 of the present specification. In this regard, it is noted that the results shown Table B, when taking into account the single compound application of Table A, very strongly support synergistic activity for the full ratio range of 4:1 to 1:4. This very strong evidence of synergistic activity supports a conclusion that the synergistic properties will be exhibited in a larger ratio range, such as 20:1 to 1:20 range recited in the present claims, since the synergistic properties are not expected to immediately drop off outside.

It is further submitted that this strong evidence of synergistic activity supports a conclusion that carbamate compounds closely related to the tested compound of formula II-6 would also exhibit the same synergistic properties when combined with the compound of formula I. Thus, clearly the extremely, closely related compounds of formula IIa (differing only with respect to the type of halogen) are expected to exhibit the same activity. Further, compounds having a very similar peripheral substituent on the end phenyl ring would also be expected to exhibit the same synergistic properties, such as the carbamate compounds of formula II as recited in claim 1. Consequently, it is submitted that the scope of the presently considered

claims 1-5 and 12-16 is fully supported by the comparative test evidence provided in the present specification with respect to establishing that this claimed subject matter exhibits synergistic properties.

Distinctions over Cited References

As noted at the Interview, the two references cited in the Office Action, i.e. Pees '607 and Müller '256, each disclose one of the compounds of employed in the claimed synergistic mixture of the present invention; but each of these references also leaves open to thousands of possible options another fungicidal compound to be combined with the described compounds. Further, each of Pees '607 and Müller '256 fails to mention any examples including the second required compound for the synergistic mixture of the claims of the present application. Further still, both of the references fail to provide any evidence that a person skilled in the art could use a predictable method to arrive at the combination of compounds encompassed by the present claims. Consequently, the present situation differs significantly from the context of obviousness analyses arising in factual situations similar to that described in, for example, *KSR International Co. v Teleflex, Inc.*, 82 USPQ2d 1385 (U.S. Supreme Court 2007). In this regard, it is noted that in *KSR*, the Court concluded that it might be possible under certain circumstances to apply an "obviousness to try" standard, but only if there were a limited number of "predictable solutions", which is not the case in the present circumstances. Thus, significant patentable distinctions exist between the claimed combination of the present invention and each of the cited references. Further, the comparative test evidence provided in the present application is fully commensurate with the scope of the present claims.

It is submitted for the reasons above that the present claims define patentable subject matter such that this application should now be placed in condition for allowance.

If any questions arise in the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

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Reply to Office Action of June 27, 2007

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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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